



October 31, 2002

Mr. Dick H. Gregg, Jr.  
League City Interim City Attorney  
Gregg & Gregg  
16055 Space Center Boulevard, Suite 150  
Houston, Texas 77062

OR2002-6211

Dear Mr. Gregg:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171514.

The City of League City (the "city") received a request for the audio recording of the requestor's telephone call to 911. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses statutes that make information confidential. You claim that the submitted information is confidential under section 552.101 in conjunction with section 34.08 of the Family Code. Former section 34.08 has been repealed. Act of April 20, 1995, 74th Leg., R.S., ch. 20, § 2, 1995 Tex. Gen. Laws 113, 282.

Section 261.201 of the Family Code provides in part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). For purposes of section 261.201(a), "child" is defined as a "person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes." *See* Fam. Code § 101.003(a) (defining "child"). You have not informed us of the age of the individual involved in the incident that precipitated the 911 call. The submitted information does not disclose the age of the individual at the time of the incident. Therefore, we are unable to conclude that the submitted information concerns a report or investigation of alleged or suspected abuse or neglect under chapter 261. For this reason, we conclude that the city may not withhold any of the submitted information under section 552.101 in conjunction with section 261.201 of the Family Code.

You next assert that the submitted recording is confidential under section 58.007(c) of the Family Code. Juvenile law enforcement records relating to juvenile conduct that occurred on or after September 1, 1997 are confidential under section 58.007. However, section 58.007(c) of the Family Code pertains only to juvenile offenders. Under section 51.02 of the Family Code, a "child" is a person who is "ten years of age or older and under 17 years of age." The submitted information does not reveal, nor have you informed us, that the individual involved is a child for purposes of section 58.007 of the Family Code. However, even if the individual at issue here were a child as defined by section 52.02 of the Family Code, section 58.007 would still be inapplicable because you have not established that the submitted information concerns juvenile conduct. Thus, because the city has not demonstrated that the requested information concerns a child as defined by section 51.02 or juvenile conduct, section 58.007(c) does not apply to the requested information.

Finally, you argue that the submitted audiotape is private. Section 552.101 of the Government Code encompasses the doctrines of common-law and constitutional privacy. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope

of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

Certain information in the submitted audiotape is protected under common-law privacy and must therefore be withheld from disclosure under section 552.101. When the tape counter is set at 000, this private information exists at the following locations on the audiotape: 13-15 and 20-21. We conclude that the remaining information in the audiotape is not excepted by section 552.101 in conjunction with common-law or constitutional privacy and must be released to the requestor.

To summarize: the city must withhold the portions of the audiotape we have noted above under section 552.101 in conjunction with common-law privacy. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

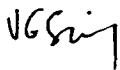
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



V.G. Schimmel  
Assistant Attorney General  
Open Records Division

VGS/sdk

Ref: ID# 171514

Enc: Submitted documents

c: Mr. Max Harris  
3300 Pebble Brook  
Seabrook, Texas 77586  
(w/o enclosures)